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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,793	08/24/2001	Donald L. Nisley	01RE025 (DODG:0044)	2159

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EXAMINER

TORRES, MELANIE

ART UNIT

PAPER NUMBER

3683

DATE MAILED: 01/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/938,793	NISLEY ET AL.
	Examiner	Art Unit
	Melanie Torres	3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 29 November 2002.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-26 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-15, 17 and 19-26 is/are rejected.
- 7) Claim(s) 16 18 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-162) Paper No(s) \_\_\_\_\_.
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 7 is objected to because of the following informalities: Claim 7 is dependent from claim 6 each of which appear to be claiming different embodiments. Therefore, claim 7 should depend from claim 1 and is being interpreted as such by the examiner for examination purposes. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the rotatable shaft" in line 6. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 6, 7, 11-15, 17, 22-24 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Nisley, '372.

Re claims 1, 22-24 and 26, Nisley discloses a bearing assembly comprising a bearing insert (12), a bearing housing (24) adapted to house the bearing insert (column 4, lines 7-13), a cover (32) removably securable to the bearing housing and a rotatable flinger (76) secured to the cover, the flinger having a first opening therethrough, the first opening being adapted to receive a rotatable shaft (14) and to enable the rotatable flinger to form a compression seal against the rotatable shaft. Alternatively, element 28 is readable as a cover.

Re claims 2 and 15, Nisley discloses wherein the rotatable flinger (76) has an inner flange and an outer flange, the inner and outer flanges having a greater diameter than a second opening through the cover (32), the inner and outer flanges cooperating with a portion of the cover surrounding the second opening to secure the flinger to the cover. (Fig 3)

Re claim 6, Nisley discloses wherein the bearing insert comprises a plurality of ball bearings. (column 4, lines 7-13).

Re claim 7, Nisley discloses wherein the bearing insert comprises a plurality of roller bearings (column 4, lines 7-13).

Re claim 11, Nisley discloses wherein the rotatable flinger (78) comprises an outer flanged portion (84) wherein the outer flanged portion is configured to fling fluid contacting the outer flanged portion away from the rotatable flinger.

Re claim 12, Nisley discloses wherein the cover (32) is adapted to form an interior volume when secured to the bearing housing.

Re claims 13 and 14, Nisley discloses a sealing assembly for forming a seal between a bearing assembly and a rotatable shaft (14) comprising a cover (28) removably securable to a bearing housing (24) and a rotatable member (78) securable to the cover and adapted to receive the rotatable shaft therethrough, the rotatable member being configured to form a seal against the rotatable shaft and to rotate therewith to fling liquids or solids that come into contact with the rotatable member away from the bearing assembly.

Re claim 17, Nisley discloses wherein grease forms a seal between the rotatable member and the cover. (Column 6, lines 12-32)

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8, 9, 19-21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nisley as applied to claims 1, 19 and 22 in view of Motsch.

Re claims 8, 19-21 and 25, Nisley does not teach wherein the cover comprises a peripheral flange and the bearing housing comprises an annular groove, wherein the cover is secured to the bearing housing by elastically deforming the cover to position the peripheral flange within the annular groove. Motsch teaches wherein a cover (28) comprises a peripheral flange and the bearing housing comprises an annular groove (29, 30), wherein the cover (28) is secured to the bearing housing by elastically deforming the cover to position the peripheral flange within the annular groove. It would have been obvious to have used the attaching means of Motsch in the invention of Nisley as a elastically deforming a cover to position the peripheral flange with the annular groove (snap attachment) is a well known alternate equivalent means for attaching two components that is well known in the art.

Re claim 9, Nisley as modified teaches an external sealing member (88) positionable adjacent the bearing housing and the cover to form a seal between the bearing housing (24) and the cover (32).

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nisley as applied to claim 1 above in view of Tooley.

Re claim 10, Nisley does not teach wherein the bearing assembly further comprises a second cover and a second rotatable flinger secured to the second cover to form a seal between the bearing assembly and the shaft, the second cover and second rotatable flinger being disposed opposite the first cover and the first rotatable flinger on the bearing housing. Tooley teaches a bearing assembly further comprises a second cover and a second rotatable flinger secured to the second cover to form a seal between the bearing assembly and the shaft, the second cover and second rotatable flinger being disposed opposite the first cover and the first rotatable flinger on the bearing housing. (Fig. 2) It would have been obvious to have included a second seal/cover assembly opposite the first assembly so as to protect the internal components of the apparatus from both ends of the housing.

***Allowable Subject Matter***

9. Claims 16 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 3-5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

11. Applicant's arguments filed November 29, 2002 have been fully considered but they are not persuasive.

Re claim 7, applicant acknowledged the error in the response. Re claim 1, applicant has indicated a correction of the limitation rejected under 35 U.S.C. 112. However, no correction was included in the response with respect to either limitation.

Applicant argues that 76 is not a rotatable flinger and further that 76 is not secured to the cover 32. First, it is unclear to the examiner how element 76 is not readable as a flinger. It is the examiner's position that though the element is not referred to as a "flinger" that it would be capable of performing as one to the same extent as applicant's 26. Further, with regard to the cover, element 32 is secured to the shaft via seal 88 and cover 28. Alternatively, the examiner feels that the "cover" limitation "cover" is so broad as to allow for the interpretation of element 28 of Nisley as a cover. Cover 28 is readable as being "secured" to the flinger to the same extent as applicant's invention as can be seen in applicant's figure 3A and Nisley's figure 3.

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Torres whose telephone number is (703)305-0293. The examiner can normally be reached on Monday-Friday, 6:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on (703)308-3421. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-2571 for regular communications and (703)308-2571 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

MT  
January 14, 2003

CHRISTOPHER P. SCHWARTZ  
PRIMARY EXAMINER

